

Exhibit "J"

1

YAR 1 SC 110520
YAR 328248

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

TROUT POINT LODGE LIMITED

APPLICANT

- and -

LOUISIANA MEDIA COMPANY, LLC

RESPONDENT

DECISION

HEARD BEFORE: The Honourable Justice Pierre Léon
Muisse

COUNSEL: Dr. Charles Leary Self-Represented
as Agent and Officer of Trout
Point Lodge Limited

PLACE: Yarmouth JC1, Yarmouth, N.S.

DATE HEARD: May 30, 2011

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TROUT POINT LODGE LIMITED V. LOUISIANA MEDIA LLC
MAY 30, 2011

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3 **THE COURT:** And Sheriff, you can open the
4 door to the courtroom as well, okay. This is the
5 matter of Trout Point Lodge Limited and Louisiana
6 Media Company, LLC. It is File Number YAR
7 328248. There is a motion before the court by
8 Trout Point for an order requiring Automatic
9 Inc., "Automatic" spelled with two t's at the
10 end, to reveal the information regarding the
11 identity of some registered Wordpress.com users.
12 Automatic Inc. is a California corporation which
13 hosts a blogging website called Wordpress.com
14 Wordpress.com in turn hosts a blog named Slabbed
15 with the URL Slabbed.wordpress.com Tel emachus
16 and unslabbed are two registered users on
17 Slabbed. Soft81_1 is the purported owner and
18 publisher of the blog. As the entity in charge
19 of the blog, Soft81_1 controls what appears on
20 it. All three maintain an anonymous identity.
21 Trout Point alleges that their blogs or postings
22 are *prima facie* defamatory and refers to the

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1 publications of Louisiana Media. And they appear
2 to be closely connected with Louisiana Media.
3 Trout Point asks that I order Automatic Inc. to
4 produce information revealing the identity of
5 these anonymous entities on the basis that they
6 will either be added as defendants in the within
7 action or added as defendants in a separate
8 action and are material witnesses in the within
9 action. Automatic has no part in what appears
10 in the blogs. It only provides the service.

11 This motion is made pursuant to *Civil*
12 *Procedure Rule 14.12* which permits a judge to
13 order a third party to produce a relevant
14 document. It is made within this action by Trout
15 Point against Louisiana Media. It is not a pure
16 motion for production at a pre-commencement of
17 action stage as was the case in **AB and Bragg**
18 **Communications Inc.**, [2010] N.S.S.C. 215 and in
19 **Mbsher and Coast Publishing Limited**, [2010]
20 N.S.S.C. 153. However the test is – the same
21 test is applicable to determining whether

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5

1 production of anonymous bloggers' identifying
2 information should be ordered so that it can be
3 added as parties to the within action. That is
4 the same test as in **Bragg** and **Mbsher**.

5 In the case at hand there is also a question
6 of whether the requested information is relevant
7 to an issue to be determined in the existing
8 action against Louisiana Media. I will deal with
9 that first. 2009 *Civil Procedure Rule 14.01*
10 defines relevant and relevancy for the purposes
11 of production and disclosure as "having the same
12 meaning as a trial of an action or on the hearing
13 of an application." This trial relevance test
14 replaced the old semblance of relevance test.
15 The Chambers Judge must now assume, as best as he
16 or she can, the vantage point of a trial or an
17 application judge and apply general evidence law.
18 The determination is based on the pleadings and
19 the evidence known to the judge. However, there
20 should still be liberal disclosure of relevant
21 information and I refer to – in support of this I

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refer to **Brown and Cape Breton Regional Municipality**, [2011] N.S.C.A. 32, at Paragraphs 8 to 13. The onus is on the plaintiffs to establish that the information they seek is relevant. Justice LeBlanc in **Murphy and Lawtons Drug Stores Limited**, [2010] N.S.S.C. 289 at Paragraph 16 cited with approval at Paragraph 3.3 from the *Law of Evidence, 5th Edition 2008*, David Paciocco and Lee Stuesser which included the following comments:

“Evidence is relevant where it has some tendency as a matter of logic and human experience to make the proposition for which it is advanced more likely than that proposition would be in the absence of that evidence.”

As the Supreme Court of Canada has said in **R. v. Arp**, [1998] 3 S.C.R. 339:

“To be logically relevant, an item of evidence does not have to firmly establish, on any standard, the truth or falsity

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7

1 of the fact in issue. The
2 evidence must simply tend to
3 increase or diminish the
4 possibility of the existence
5 of a fact in issue. As a
6 consequence there is no
7 minimal probative value
8 required for evidence to be
9 relevant.”
10

11 Trout Point’s pleadings allege, among other
12 things, that Louisiana Media’s reports and
13 broadcasts relating to the Aaron Broussard
14 investigation improperly included references to
15 Trout Point and photos of its lodge creating the
16 impression that Mr. Broussard was an owner of the
17 Trout Point Lodge and that Trout Point was
18 implicated in his alleged wrongdoings. Louisiana
19 Media’s amended Statement of Defence states, at
20 Paragraph 16:

21

22 “The Defendant states that as
23 to the totality of the
24 broadcast or broadcasts,
25 whether by way of television,
26 internet or otherwise,
27 containing the January 6, 2010
28 interview of Aaron Broussard,
29 it was clearly communicated to
30 and understood by its audience

8

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1 that the Broussard properties
2 were not the Plaintiff, Trout
3 Point Lodge Limited's but
4 rather were properties
5 connected to the Plaintiff
6 Trout Point Lodge Limited.
7

8

And at Paragraph 21:

9

10 "The Defendant denies that any
11 broadcast or broadcasts either
12 by way of television or
13 internet or otherwise made by
14 it with regard to Aaron
15 Broussard were understood by
16 their plain and ordinary
17 meaning or by way of innuendo
18 or otherwise to mean any of
19 the following with regards to
20 the Plaintiff Trout Point
21 Lodge Limited, the Plaintiff
22 Charles L. Leary and the
23 Plaintiff Vaughn J. Perret, or
24 any of them"
25

26

And I won't list all of them

27

28 d) That the Plaintiffs or any
29 of them were involved in or
30 connected with or the *situs* of
31 any conspiracy involving
32 politicians and contractors;
33 g) That the Plaintiffs or any
34 of them were somehow involved
35 in illegal, criminal and/or
36 unethical activities including
37 money laundering, political

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9

1 (inaudible due loud noise.)
 2 and kickbacks;
 3 h) That the Plaintiffs or any
 4 of them were involved in or
 5 connected with any kickback
 6 schemes, money laundering,
 7 misuse of public monies,
 8 fraud, general political
 9 corruptions, unsavoury
 10 characters and shady dealings;
 11 i) That the Plaintiff, Trout
 12 Point Lodge Limited was owned
 13 by Aaron Broussard and was
 14 illicitly rented to government
 15 contractors and was the
 16 subject of allegations and
 17 investigations including by
 18 the Louisiana Metropolitan
 19 Crime Commission and the
 20 United States Attorney.
 21
 22

23 Louisiana Media owns and operates WWUE which
 24 is a Fox television affiliate. Charles Leary's
 25 affidavit filed May 12, 2011 in support of this
 26 motion attaches as Exhibit A comments and
 27 publications from the blog Slabbedwordpress.com
 28 In that exhibit unslabbed refers to Val Bracy who
 29 was the reporter in an investigative report
 30 broadcast by WWUE Louisiana Media on Fox 8 News
 31 in January 2010, the contents of which Trout
 32 Point alleges are defamatory. Unslabbed's March

10

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1 8, 2010 posting states:

2

3 “(inaudible due to mumbling..)
4 Confirmed there was a new
5 interview by Bracy with
6 Theriault. (inaudible due to
7 mumbling..) refused to go on
8 camera, also FYI reliable
9 sources say Fox 8 was sued
10 recently by Trout Point Lodge.
11 Apparently they see having any
12 connection to Aaron Broussard
13 as a negative. Odd that since
14 Danny Abel et al, that would
15 be the Spain connection across
16 from the (inaudible due to
17 mumbling..), the Costa Rican
18 location, seemed to keen on
19 having the crème de la crème
20 of the political elite as
21 investors in and around the
22 prestigious
23 property/properties. Odd also
24 that a resort would object to
25 any publicity for their
26 business. Must be nice to be
27 so special and elite that only
28 certain people are okay to be
29 associated with their
30 endeavours.”

31

32 I’ll just skip the next paragraph.

33

34 “So we’re back to why would
35 Trout Point suddenly lash out
36 at Val Bracy and Fox 8. After
37 suing the Times Picayune News

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1 and effectively silencing
2 them, is this an attempt to do
3 the same to Fox 8? Is Bracy
4 hitting too many nerves? It
5 seems strange to have waited
6 so long to sue in Canada over
7 a story that is old news. So
8 maybe they want some more
9 publicity for their joints.
10 Hope they are ready for the
11 depositions and requests for
12 omissions coming their way.
13 FYI Trout Point, if I were
14 you, I would review Aaron's
15 interviews and the Fox 8 new
16 account before I racked more
17 in legal fees suing the wrong
18 parties. Frivolous is
19 frivolous and this is a silly
20 lawsuit. IMHO."
21

22 On March 8th of 2010 the notice of action had
23 not been filed against Louisiana Media. Only a
24 notice of intended action had been filed on
25 Louisiana Media. The comments about suing Fox 8,
26 the Defendant's station and waiting so long to
27 sue in Canada and the lawsuit being frivolous are
28 indicative of an insider connection or
29 association with Louisiana Media. Also in
30 Exhibit A in a blog posted February 16, 2011,
31 Tel emachus connects Broussard with Trout Point

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1 Lodge, stating well this might be one thing the
2 ethics Board is looking at.

3

4 "You can take a fishing pole
5 and catch a trout in your
6 front yard."
7

8 "Ed Muniz recalled Aaron
9 Broussard telling me in 1998
10 about a real estate investment
11 opportunity in Nova Scotia
12 Canada. The subject, Muniz
13 said, was Trout Point Lodge, a
14 four hour drive from Halifax
15 and deep in the pristine
16 forests of a provincially-
17 protected wilderness area.
18 Both men were serving on the
19 Jefferson Parish Council at
20 the time and Muniz said
21 Broussard asked him to buy
22 into the development 25,000
23 for a two percent stake. The
24 Metropolitan Crime Commission
25 on Wednesday asked for a State
26 Ethics Investigation into
27 whether Broussard had been
28 renting the Nova Scotia
29 vacation property to Jefferson
30 Parish contractors. Two days
31 later Broussard resigned as
32 Parish President citing
33 distractions of the widening
34 federal criminal investigation
35 into his administration. The
36 investigation began with
37 subpoenas relating to the
38 private insurance businesses

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1 of Broussard's former chief
2 administrator, Tim Whitmer,
3 who resigned Monday. Federal
4 authorities also have
5 subpoenaed records regarding
6 River Birch Inc. which owns a
7 Waggaman landfill consigned a
8 deal in June to be the sole
9 garbage dump for Jefferson
10 Parish for the next 25 years.
11 Charles Leary, Managing
12 Director of the Lodge, emailed
13 the Times Picayune on Friday
14 saying Broussard does not, and
15 has never had any ownership or
16 management involvement with
17 Trout Point Lodge Limited.
18 The message went on to say
19 Broussard owns a vacation home
20 on the same road. But the
21 familiar names of some of the
22 investors shed some light on
23 the political lattice of
24 Jefferson Parish. They
25 include Bennett Powell who
26 said last week he bought a
27 small share in the lodge
28 similar to the one described
29 by Muniz and Larry Stoulig who
30 is listed as a partner in
31 Broussard's management company
32 who had said other investors
33 bought him out five years ago.
34 The late Marie Krantz, former
35 owner of fairgrounds,
36 Jefferson Downs race tracks
37 and Nick Baroni, Kenner City
38 Council member while Broussard
39 was the Mayor there, also
40 invested in developing
41 property near the lodge,
42 Baroni said. Baroni and

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1 Stoulig have served in federal
 2 prison on fraud charges in
 3 separate incidents unrelated
 4 to the Nova Scotia
 5 investments. The link between
 6 Nova Scotia and Southern
 7 Louisiana outside of the
 8 historical link of Acadian
 9 culture seems to have begun
 10 with Daniel Abel, a lawyer who
 11 made a name for himself in
 12 1999 working with the late
 13 attorney Wendell Gauthier to
 14 sue gun manufacturers for
 15 violence in New Orleans.
 16 Muniz and Abel served as
 17 Broussard's legislative aid
 18 when he was on the Jefferson
 19 Parish Council. But Louisiana
 20 Secretary of State records and
 21 documents provided by Muniz
 22 show that in 1997 Abel,
 23 Charles Leary and Vaughn
 24 Perret formed a Louisiana
 25 corporation called La Ferme
 26 Limited and its Canadian
 27 counterpart, La Ferme
 28 L'Acadie. The three soon
 29 opened the Trout Point Lodge,
 30 according to a 2001 travel
 31 story in the Times Picayune.
 32 After investing in the lodge
 33 Muniz said he turned down a
 34 second offer from Broussard in
 35 1999 to buy nearby property.
 36 Having yet to see a financial
 37 report about the lodge, Muniz
 38 said he demurred on the new
 39 opportunity."
 40

41 Tel emachus in a blog posted February 25,

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1 2011, appears to view the Val Bracy interview
2 erred by WWUE Louisiana Media as revealing
3 Broussard's wrongdoings in relation to his Nova
4 Scotia property or properties, stating:

5

6 "On January 7, 2010 the
7 campaign of former Parish
8 President Aaron Broussard paid
9 a Bobby Curvan \$1,800 a plate
10 his next fundraiser. Well
11 that sounds like the makings
12 of a great party. The
13 following day actually saw
14 Broussard abruptly resign from
15 office in disgrace."
16

17 And there's a reference to a website.

18

19 "That's pretty sudden, isn't
20 it? Aaron Broussard
21 interviewed by Val Bracy and
22 video January 6, 2010, WWUE
23 Fox 8. Pretty sure it was the
24 day before when the Rocky
25 Marciano of New Orleans TV
26 real journalism pounded,
27 punched and (inaudible due to
28 mumbling..) away at a
29 bewildered and whimpering
30 Aaron Broussard about his Nova
31 Scotia property (properties).
32 As of, and up to that day and
33 the day after it appeared that
34 resignation was not something

16

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1 he had at least communicated
2 in any way to anyone in his
3 campaign."
4

5 Telemachus in a blog posted February 21,
6 2011 connects Broussard with investment in
7 properties at Trout Point Lodge, stating:

8

9 "According to the 7/22/01 TP,
10 Peter Butler was an investor
11 in at least one of the
12 unidentified properties at
13 Trout Point Lodge, Nova Scotia
14 as were Wendell Gauthier and
15 Aaron Broussard. Were you
16 and/or was anyone named,
17 (inaudible due to mumbling.)
18 Sneed, Ward, Butler and/or any
19 JP public official, aid or
20 employee or relatives invested
21 or themselves in any way
22 investors in any of the below
23 entities and if so, in what in
24 what amounts, which
25 percentages and which entities
26 and for what periods?"
27

28 And there's a list and that list includes
29 Trout Point Lodge Limited and Trout Point Lodge.
30 I pause to note that Soft81_1 controls what is
31 posted on those blogs.

32 At Paragraph 9 of his affidavit of May 12,

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17

1 2011, Charles Leary states, in relation to
2 Soft81_1 – in researching the story – sorry:

3

4 “Soft81_1 published the
5 following on
6 Slab.wordpress.com on April
7 26, 2011 in a post entitled,
8 ‘Slab takes a look at the
9 Trout Point business venture.
10 Let's start at the end and
11 work back.’”
12

13 And then there's a further reference to the
14 quote that's found in that blog and it states:

15

16 “In researching the story,
17 what I have found is a pattern
18 of Leary, Abel and the girls
19 being first-class bitches and
20 I think it is safe to assume,
21 based upon the retractions
22 they made, the Times Picayune
23 and its corporate parent their
24 bitch in this fiasco because
25 Rainnie was onto something
26 big, albeit a bit dated in the
27 fleecing of several local
28 individuals that were marketed
29 and sold ownership in the
30 Trout Point by Aaron Broussard
31 who had close personal ties
32 and business ties to Abel,
33 Leary and the girls.”
34

18

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1 At Paragraph 15, and Charles Leary states –
2 sorry this quotation that I just quoted, sorry –
3 implicates Trout Point and its principals in Mr.
4 Broussard's alleged wrongdoings. At Paragraph 15
5 Charles Leary states:

6

7 "The publisher of the Slabbed
8 blog also posted material
9 stating that there is a
10 mystery and grandiose cover-up
11 underway involving me, my
12 business associates, Aaron
13 Broussard and the Louisiana
14 News Media."
15

16 Charles Leary provided oral evidence that on
17 April 26, 2011 Soft81 posted the following:

18

19 "I think by now even our most
20 casual readers know our
21 successor website, Slabbed.org
22 was knocked offline courtesy
23 of the Times Picayune's
24 corporate parent, Advanced
25 Publications and this started
26 a chain of events that
27 resulted in Slab temporarily
28 being moved back to Wordpress.
29 I'd submit this was a
30 miscalculation of gargantuan
31 proportions for several
32 reasons which will become

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19

1 clear as I roll out this
2 series of posts on Aaron
3 Broussard's connections to
4 Trout Point Lodge and its
5 purported owners, Charles
6 Leary, Danny Abel and Vaughn
7 Perret. I say purported
8 because others were sold two
9 percent ownership interest in
10 the Trout Point development as
11 touted by Broussard and those
12 folks are the bag holders in
13 this deal."
14

15 That's the end of that quote. These are
16 further clear comments that Broussard is
17 connected to Trout Point Lodge and that its
18 principals are involved in the corruption as "bag
19 holders." In these and other postings the
20 anonymous users bloggers appear generally to be
21 denouncing the retraction actions of Times
22 Picayune while applauding Val Bracy, the reporter
23 in the investigative report broadcast by
24 Louisiana Media and writing comments that clearly
25 connect Trout Point and its principals with Mr.
26 Broussard and his alleged wrongdoings. That
27 tends to show that they interpret the Louisiana
28 Media broadcast as supporting their comments.

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1 They are anonymous. It is not known for sure
2 whether they are biased against Trout Point for
3 any reason and have set themselves to deducing
4 some unusual meaning from Louisiana Media's
5 broadcast or they are part of a reasonable
6 audience of ordinary intelligence, even though
7 the content of their blogs does suggest some
8 bias. If they are part of a reasonable audience
9 of average intelligence, that tends to show that
10 Louisiana Media's audience did not understand
11 this broadcast as alleged in Louisiana Media's
12 amended statement of defence at Paragraphs 16 and
13 21. If they are biased for any reason it will
14 tend to show that they have set themselves to
15 deducing an unusual meaning from the broadcast
16 and reached a slanted interpretation of Louisiana
17 Media's broadcast that is different from what
18 WUE Louisiana Media's unbiased and reasonable
19 audience of ordinary intelligence would
20 understand. The existence or non-existence of
21 bias in the anonymous bloggers' users may be

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21

1 determined if their identity is revealed.
2 Therefore, in my view, considering the principles
3 of liberal disclosure, their identity is relevant
4 to interpreting whether the content that
5 Louisiana Media's broadcast was defamatory.

6 Paragraph 7 of Charles Leary's affidavit of
7 May 18, 2011 refers to a Slabbed posting entitled
8 "Whitmergate" which includes a transcription of
9 Val Bracy's interview with Aaron Broussard on
10 January 6, 2011. According to Dr. Leary, it is
11 an accurate transcription and is in accord with
12 the video provided by WWUE but contains sections
13 not appearing in the video. The identity of the
14 publisher of the blog will help determine whether
15 the posted transcript is authentic or not. The
16 more credible the publisher, the more likely it
17 is to be authentic. In assessing whether a
18 broadcast publication was defamatory it is
19 important to determine what the full and complete
20 content was. The identity of the publisher, as
21 it relates to authenticity, is relevant to that

1 determination.

2 Trout Point has pleaded injurious falsehood
3 and intentional interference with economic
4 relations. Consequently the intention and
5 knowledge of falsehood are issues to be
6 determined. As noted above, the contents of some
7 of the blogging is indicative of a close or
8 insider connection between the anonymous blogger
9 and Louisiana Media. The bloggers are clearly
10 implicating Trout Point and its principals in
11 Broussard's wrongdoings in stating Broussard was
12 involved in Trout Point Lodge. That is
13 continuing more than one year after the January
14 2010 broadcasts. That those bloggers are from
15 within or closely connected to Louisiana Media,
16 it would tend to make it more likely that
17 Louisiana Media intentionally created the
18 impression of a direct connection between Trout
19 Point and Aaron Broussard as well as his alleged
20 wrongdoings. Thus the identity of the bloggers
21 is relevant to intentionality.

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1 Trout Point advised the court that it
2 intends to add the anonymous bloggers as parties
3 if they have a sufficiently close connection to
4 Louisiana Media or to sue them separately if they
5 do not. They are making the motion within the
6 current action, therefore, the motion must be
7 considered on the basis that there is an
8 intention to add them as parties. Trout Point
9 has no way of knowing how close the connection is
10 even though there are indicia of a close
11 connection. Trout Point recognizes that if it
12 were to turn out that the connection was not
13 sufficiently close to warrant joining the
14 bloggers as parties, the implied undertaking rule
15 outlined in *Civil Procedure Rule 14.03* would
16 require it to seek the court's permission to use
17 the information in question in connection with
18 the matter outside of this proceeding.

19 The anonymity of the bloggers has left Trout
20 Point in the position where it is making the
21 motion based on what appears to it to be the most

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1 likely result, i.e. that the bloggers will be
2 added as parties. Either way it is intended that
3 they will become Defendants in an action against
4 them by Trout Point. Consequently in my view the
5 test to determine whether the bloggers' identity
6 is to be disclosed for that purpose is the same
7 whether it is within an existing proceeding or in
8 relation to a separate proposed proceeding. The
9 relevant test in a defamation action was outlined
10 in **Warman and Wilkins-Fournier**, [2010] Q.N.S.C.
11 2126 and approved by the Supreme Court of Nova
12 Scotia in **AB and Bragg Communications Inc.**,
13 [2010] N.S.S.C. 215. Under that test the
14 application must establish the following:

15

- 16 1. *A prima facie* case;
- 17 2. Involvement of the third party from
18 whom production is sought;
- 19 3. That the third party is the only
20 practical source of the information;
- 21 4. That the third party will be reasonably

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1 compensated for expenses and legal
2 costs of compliance; and

3 5. The public interest in disclosure
4 outweighs the legitimate privacy
5 interests and interests and freedom of
6 expression.

7

8 I will deal with each of those in turn.
9 First whether a *prima facie* case has been
10 established. In my view the words in the blogs
11 would tend to lower Trout Point's reputation in
12 the eyes of a reasonable person and do refer to
13 Trout Point. The blogs are posted on a publicly-
14 accessible website. They were accessed freely by
15 Charles Leary. The most likely inference is that
16 they were communicated to persons other than
17 Trout Point. As such, Trout Point has
18 established a *prima facie* case that they were
19 published and were defamatory.

20

21 2. Regarding involvement of the third party

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1 from whom production is sought, Automattic Inc.
2 is involved in the sense that it hosts and
3 publishes the blogging website on which the blogs
4 were posted even though it is not implicated in
5 the alleged wrongful acts.

6
7 3. The third party is the only practical
8 source of information. Automattic has a policy
9 of generally producing information identifying
10 anonymous bloggers on its website if directed to
11 do so by court order including a court order
12 originating from outside the US. It appears that
13 in the circumstances to be the only avenue to
14 obtain the information sought.

15
16 4. The third party will be reasonably
17 compensated for expenses and legal costs of
18 compliance. The information requested ought to
19 be easily accessible. For the most part it ought
20 to have been obtained when the bloggers signed
21 onto the website. Automattic's policy indicates

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1 it contemplates readily providing such
2 information when directed to do so by any court.
3 Given that we are talking about a website, more
4 likely than not all the information is in
5 electronic form and can simply be emailed to
6 Trout Point at essentially no cost to Automatic.
7 Further, its standard procedure is to forward
8 court orders to the bloggers themselves in case
9 they want to quash the legal process. Therefore
10 Automatic itself would not incur any legal
11 costs.

12

13 5. The public interest in disclosure
14 outweighs the legitimate privacy interest and
15 interests in freedom of expression. Automatic's
16 policy is to generally provide information it is
17 directed to provide by court order including
18 international orders. Examples include requests
19 for information about anonymous bloggers sued for
20 defamation. In addition the privacy policy
21 states:

1

2 "If you are a blogger looking
 3 for a completely anonymous
 4 blogging service or if the
 5 fact that the above data could
 6 be revealed in court
 7 proceedings, *et cetera* bothers
 8 you, please do not use
 9 wordprocess.com (sic) for your
 10 blogging."
 11

12 When a blogger signs up he or she agrees to
 13 the host's privacy policy. Therefore there is a
 14 diminished expectation of privacy where, as in
 15 the case at hand, the anonymous blogger is
 16 posting information that is *prima facie*
 17 defamatory. And in support of that I refer to
 18 **York University and Bell Canada Enterprises,**
 19 [2009] Q.J. 3689 and that is a decision of the
 20 Ontario Superior Court of Justice. Generally the
 21 public interest in not allowing individuals to
 22 distribute defamatory materials under the cloak
 23 of anonymity will outweigh the public interest in
 24 protecting such a person's right to privacy and
 25 freedom of expression. That in principle was the
 26 conclusion that was reached in **Bragg, Mbsher** and

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1 **York University v. Bell Canada Enterprises.**

2 In the case at hand the content and tone of
3 the blogs is aggressive. There is no indication
4 that the bloggers are fearful of the Plaintiff or
5 of other targets of their comments. There is no
6 indication that their identity should be
7 protected for safety reasons. In addition in the
8 case at hand, the blogs contain comments based on
9 the actual or perceived sexual orientation of the
10 intended targets. Those comments are clearly
11 meant to be derogatory and insulting. I will not
12 reproduce them here. It is the type of
13 expression that engenders harmful results such as
14 discrimination and hatred. It is not the type of
15 free expression that deserves protection and
16 fostering.

17 Considering these factors, I am of the view
18 that the public interest and disclosure outweighs
19 the legitimate privacy interest and interests and
20 freedom of expression of the anonymous bloggers.
21 And given this conclusion and that I have found

30

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1 the requested information to be relevant, it is
2 appropriate that I exercise my discretion under
3 *Civil Procedure Rule 14.12(1)* to order the third
4 party production requested. I therefore grant
5 the Plaintiff's motion. I will initial the order
6 and have it issued and it should be available for
7 pick up fairly shortly. Clerk, do you know if
8 the Prothonotary is in today?

9 COURT CLERK: Yes, she is.

10 THE COURT: She's in today so that should be
11 available for pick up later today, okay? Now I'm
12 assuming that you're not making any motion for
13 costs where the Defendants did not oppose the
14 motion. They simply raised the issue of
15 relevance. Am I correct in that assumption Dr.
16 Leary?

17 DR. LEARY: That's right, My Lord.

18 THE COURT: All right, thank you.

19 UNIDENTIFIED MALE VOICE: My Lord, Robert
20 (inaudible due to mumbling..) Just one point
21 arising out of this. When the order is served

DECISION BY THE COURT

31

1 and the materials are produced to the Plaintiff
2 it's understood that they will provide the
3 materials for the Defendant (inaudible due to
4 mumbling..)

5 THE COURT: Yeah, so from my perception it
6 should be automatic because it's obviously
7 something that's relevant to the proceeding and
8 that they have in their possession.

9 UNIDENTIFIED MALE VOICE: Thank you My Lord.

10 THE COURT: Okay, thank you everyone. We
11 can close the court, clerk.

12 DR. LEARY: Thank you My Lord.

13 THE COURT: Thank you.

14

15 [ADJOURNED AT 11:40 A.M.]

16

CERTIFICATE OF COURT TRANSCRIBER

I, Rita Newton, Court Transcriber, hereby certify that I have transcribed the foregoing and that it is a true and accurate transcript of a decision given in the matter of **Trout Point Lodge Limited v. Louisiana Media Company, LLC**, YAR 328248 taken by way of electronic recording in Halifax, Nova Scotia on May 30, 2011.

Rita Newton, Certificate No. 2006-56

CERTIFIED COURT TRANSCRIBER,

PROVINCE OF NOVA SCOTIA

Halifax, Nova Scotia

July 7, 2011